

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

CARL M. REGAN,

Petitioner,

v.

CASE NO. 2:07-13240
HONORABLE GEORGE CARAM STEEH

BLAINE LAFLER,

Respondent.

**ORDER DENYING AS MOOT PETITIONER'S APPLICATION
TO PROCEED *IN FORMA PAUPERIS* ON APPEAL AND
PETITIONER'S MOTION FOR A CERTIFICATE OF APPEALABILITY**

On August 3, 2007, Petitioner filed his third habeas corpus petition challenging the same state conviction. The Court transferred the habeas petition to the United States Court of Appeals for the Sixth Circuit as a second or successive petition pursuant to 28 U.S.C. § 1631 and *Sims v. Terbush*, 111 F.3d 45, 47 (6th Cir. 1997).¹

This matter currently is pending before the Court on Petitioner's application for leave to proceed *in forma pauperis* and his motion for a certificate of appealability. Petitioner was granted *in forma pauperis* status in the District Court, and no appellate filing fee is required for an application seeking authorization to file a second or successive application. 6 Cir. R.

¹ Section 1631 provides in pertinent part:

Whenever a civil action is filed in a court . . . and that court finds that there is a want of jurisdiction, the court shall, if it is in the interest of justice, transfer such action . . . to any other such court in which the action . . . could have been brought at the time it was filed . . . , and the action . . . shall proceed as if it had been filed in . . . the court to which it is transferred on the date upon which it was actually filed in . . . the court from which it was transferred.

22(b)(4). Furthermore, the Court's order transferring Petitioner's habeas petition to the Court of Appeals was not a "final order" within the meaning of 28 U.S.C. § 2253(c)(1)(A). Therefore, a certificate of appealability is unnecessary. Petitioner's application to proceed *in forma pauperis* on appeal [Dkt.10, Aug. 29, 2007] and Petitioner's motion for a certificate of appealability [Dkt. 11, Aug. 29, 2007] are DENIED as moot.

Dated: September 10, 2007

S/George Caram Steeh
GEORGE CARAM STEEH
UNITED STATES DISTRICT JUDGE

CERTIFICATE OF SERVICE

Copies of this Order were served upon attorneys of record on
September 10, 2007, by electronic and/or ordinary mail.

S/Josephine Chaffee
Deputy Clerk